Supreme Court, U.S.
FILED

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0264881

No.

IN THE

UNITED STATES SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS,)
)
Respondent,)
vs.)
)
ROBERT J. SHARPENTER,)
)
Defendant-Petitioner.)

IX.

SEPARATE VOLUME APPENDIX
ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT
FROM THE ILLINOIS APPELLATE COURT
SECOND APPELLATE DISTRICT, ELGIN, ILLINOIS

BRUCE F. BOWMAN, 0264881
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ORAL ARGUMENT REQUESTED

46 pp

IN THE
UNITED STATES SUPREME COURT

INDEX TO SUPPLEMENTAL APPENDIX
TO PETITION FOR WRIT OF CERTIORARRI OF
ROBERT J. SHARPENTER,
INFORMATION RETYPED 9 1/4 x 6 1/8 PAPER PURSUANT
TO 2-6-2003 LETTER AND 3-24-2003 TELEPHONE CALL
WITH US SUPREME COURT CLERK JOSE MAGVIGAD

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IN THE
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No. 2—01—0070

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)Appeal from the Circuit Court)of Kendall County.
Plaintiff-Appellee,	)No. 00—CM—0361
v.	)
ROBERT J. SHARPENTER,	)Honorable)James M. Wilson,
Defendant-Appellant.	)Judge, Presiding.

SUMMARY ORDER

Defendant, Robert J. Sharpenter, appeals the trial court's order, requiring defendant to pay the cost for the care and transportation of defendant's two donkeys and one goat, after the animals were impounded. We affirm, issuing this summary order in accordance with Supreme Court Rules 23 (c) (3), (7), (8). 166 Ill. 2d Rs. 23 (c) (3), (7), (8).

Initially, we address the State's argument that we should dismiss this appeal because defendant's brief does not comply with Supreme Court Rule 341. 166 Ill. 2d R. 341. While defendant's appellate brief is deficient in other regards, it does not exceed the 75-page limit provided in Rule 341 (a) for briefs that are not printed. Further, the brief is not so deficient as to hinder our review. Thus, we deny the State's request. However, we will disregard those portions of defendant's brief that are inappropriately argumentative, or unsupported by the record or

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legal authority. See Goodwin v. McHenty County Sheriff's Department Merit Comm'n, 316 Ill. App. 3d 1238, 1242 (2000). The defendant makes several arguments regarding the proceedings of the misdemeanor charges of allowing his animals to run at large. 510 ILCS 55/1 (West 1998). It is well settled that when a court's decision on the merits will not afford either party relief the case is rendered moot, and any decision is merely an advisory opinion. People v. Burnett, 267 Ill. App. 3d 11, 17 (1994). This court may not issue advisory opinions or render an opinion simply for the sake of creating precedents for future cases. Burnett, 267 Ill. App. 3d at 18. In this case, defendant has already been found not guilty of the misdemeanor charges, thus, any decision we would render regarding these issues can afford defendant no relief and would be merely advisory. Accordingly, we will address only the arguments relating to the trial court's order requiring defendant to pay for the expenses relating to the impoundment of his animals.

Defendant argues that the trial court's order requiring defendant to pay for the costs associated with the care and transportation of his animals was erroneous because the State impounded the animals without providing 24 hour-notice so that defendant could correct the situation. Defendant ignores the clear language of section 1.2 of the Illinois domestic animals Running At Large Act which provides, in relevant part:

> "A notice of a violation of this Act shall be given to the person or owner of livestock running at large if known and a maximum of 24 hours may be granted in which to make the necessary corrections if the violation is an accidental occurrence and an investigation reveals no identifiable individual at fault. Any livestock allowed to run at large may be impounded at a facility capable of restraining such livestock. A notice of impoundment shall be delivered to the owner of such livestock in person or by certified mail.

> Any expense incurred in such impoundment shall become a lien on the livestock impounded and must be discharged before the livestock are released from the facility." (Emphasis added.) 510 ILCS 55/1.2 (West 1998).

Thus, the language of the statute is permissive. The State may, in its discretion, provide the owner with 24 hours to confine his animals. In this case, the trial court found that the violation was not accidental and, even if it were, the State was not required to afford defendant 24 hours to correct the situation.

Defendant argues that the order requiring defendant to pay expenses of impoundment must be vacated because the county did not provide a court reporter for the hearing. Defendant fails to cite to any authority to establish that Kendall County was required to provide a court reporter in this misdemeanor matter. See People v. Grundset, 63 Ill. App. 3d 787, 789-90 (1978) (no constitutional right to a transcript in misdemeanor cases). Defendant had the burden to present a complete record on appeal and, in "the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." Foutch v. O'Bryant, 99 Ill. 2d 289, 392 (1984).

Lastly, defendant argues that the trial court erred by requiring him to pay expenses for the impoundment of his animals. In making its finding of fault, the trial court noted that defendant testified that the livestock "get loose approximately one time per year over the last five years and has been notified by the neighbors on these occasions." Further, defendant's assistant, Eddie Mackie, stated in an affidavit that Mackie was responsible for repairing the fence, Mackie knew the animals had run loose a couple of times, and Mackie had been negligent in his duties. Defendant has failed to establish that this finding of fault was against the manifest weight of the evidence of that the trial court abused its discretion by requiring defendant to pay for the expenses of impoundment.

The judgment of the circuit court of Kendall County is affirmed.

Affirmed.

McLAREN, J., with BOWMAN and BYRNE, JJ., concurring.

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STATE OF ILLINOIS APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK
847/695-3750
847/695-0092 TDD

APPELLATE COURT BUILDING
ELGIN, ILLINOIS
60120-5558

Appeal from the Circuit Court of County of Kendall
Trial Court No.: 00CM0361, 2000CM0361

THE COURT HAS THIS DAY, 04/10/02, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-01-0070

People v. Sharpenter, Robert J.

Upon consideration of the petition for rehearing filed by appellant, the petition for rehearing is hereby denied. (McLaren, Bowman, Byrne, JJ.)

Robert J. Mangan
Clerk

cc: Bruce F. Bowman
Honorable Timothy J. McCann
Martin P. Moltz, Deputy Director
Stephanie Hoit Lee

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93839

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINIGFIELD, ILLINOIS 62701
(217) 782-2035

October 2, 2002

Mr. Bruce F. Bowman
Attorney at Law
1741 West Galena Blvd.
Aurora, IL 60506

No. 93839 - People State of Illinois, respondent, v. Robert J. Sharpenter, petitioner. Leave to appeal, Appellate Court, Second district.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 2002.

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SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING

SPRINIGFIELD, ILLINOIS 62701

Juleann Hornyak
Clerk of the Court
(217) 782-2035

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November 5, 2002

Mr. Bruce F. Bowman
Attorney at Law
1741 West Galena Blvd.
Aurora, IL 60506

In re: People State of Illinois, respondent, v. Robert J. Sharpenter, petitioner.
No. 93839

Today the following order was entered in the captioned case:

Motion by petitioner for leave to file a motion for reconsideration of the order denying petition to appeal as a Matter of right or petition for leave to appeal. Motion Denied.

Order entered by the Court.

Mandate has issued forthwith to the Appellate Court, Second District.

Very truly yours,

S/ Juleann Hornyak
Clerk of the Supreme Court

cc: Hon. Jim Ryan
State's Attorney Kendall County
States Attorneys App. Pros. Elgin

US 7

0264881

No. 93839

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Respondent,
vs.

RECEIVED
OCT 15 2002
SUPREME COURT CLERK

ROBERT J. SHARPENTER,

Defendant-Petitioner.

MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION AND/OR REHEARING
OF PETITION FOR LEAVE TO APPEAL FILED 5-3-2002

Now comes Defendant-Petitioner ROBERT J. SHARPENTER, by Bruce F. Bowman, his attorney, and requests Reconsideration and/or Rehearing on the Petition for Leave to Appeal to the Supreme Court of Illinois filed in the above captioned case, and in support thereof states:

1. A Petition for Leave to Appeal to the Supreme Court of Illinois was filed in this case 5-3-2002.
2. An Order that DENIED the petition for leave to appeal in the above entitled cause was entered 10-2-2002.
3. The above captioned case was filed as a criminal case in Kendall County, Illinois, case number 2000 CM 0361, and Defendant ROBERT J. SHARPENTER was charged in a 4 count criminal complaint, and a preliminary order for payments was entered 6-5-2002

US 8

when Defendant ROBERT J. SHARPENTER represented himself.

4. Defendant-Petitioner ROBERT J. SHARPENTER was subsequently found NOT GUILTY on all four counts for the same four days for the same animals in an order entered 1-3-2002, and the preliminary 6-5-2002 order for payments is being appealed.

5. A subsequent order in the same case is controlling.

6. The Petition of Defendant ROBERT J. SHARPENTER for Leave to Appeal the Supreme Court of Illinois should be granted as a matter of right, since Constitutional issues, actually Constitutional Amendment issues are involved.

7. UNITED STATES CONSTITUTION, AMENDMENT FOUR, the right to own property and to be free from unreasonable searches and seizures.

   The property of Defendant ROBERT J. SHARPENTER, being two donkeys and one goat were impounded and taken March 20, 2000, without notice in the year 2000, of animals running at large violation. Notice was as follows:

Year 2000	NO NOTICE
Year 1999	NO NOTICE
Year 1998	One purported oral notice
Year 1997	One written notice from Sheriff

   Defendant ROBERT J. SHARPENTER was charged in the year 2000, with Permitting Domestic Animals to run at large as follows:

March 12, 2000	one goat, two donkeys
March 13, 2000	one goat, two donkeys
March 19, 2000	one goat, two donkeys
March 20, 2000	one goat, two donkeys

See Transcript 10-24-2000, pages 15, 16, 17.

The one goat and two donkeys of Defendant ROBERT J. SHARPENTER were impounded March 20, 2000, without notice of animals running at large in the year 2000.

The property of Defendant ROBERT J. SHARPENTER was impounded 3-20-2000 without sufficient notice, and therefore unreasonably seized without due process of law contrary to and in violation of United States Constitution, Amendment Four, the right to own property, and to be free from unreasonable searches and seizures.

8. The 10-30-2000 Kendall County trial transcript states, at page 31, and continuing:

MR. BOWMAN: Judge, I object to the testimony, it's beyond the one year, six months statute of limitations.

MS. FLETCHER: ...

We're establishing that Mr. Sharpenter not only received notice in 1997, but that he also received oral notice in 1998. I'm simply establishing the first time that there was an on going notification by the Sheriff's Department, one being in writing, the second one being oral and that there—I would analogize this to criminal trespass. Once you notify someone that they are not to come on your property, you don't have to re-serve them every year for that notification to be

good—to be sufficient for a criminal trespass charge some two or three years down the road....

And I would suggest to the Court that once we establish that Mr. Sharpenter was given statutory written notice in 1997, that he was notified his animals were not to be loose again...

The notification in 1997 does carry into the year 2000. It carries into the year 2002 as far as the statute appears to provide for.

...

MR. BOWMAN: Judge, there is a statute of limitations and the offense has to take place within the statute of limitations, and it's logical that the notice has to be within the statute of limitations.

Transcript 10-30-2000 (R. 10-30-2000, R. 31-33).

9. The property of Defendant ROBERT J. SHARPENTER was impounded 3-20-2000, with a 1997 notice, a notice that was more than one year and six months before impoundment and contrary to and in violation of the one year and six month statute of limitations for a Class C Misdemeanor. Illinois Compiled Statutes, Chapter 720 Section 5/3.5.

10. The property of Defendant ROBERT J. SHARPENTER was taken without sufficient notice, and therefore unreasonably seized without due process of law, contrary to and in violation of United States Constitution, Amendment Four, the right to own property, and to be free from unreasonable searches and seizure.

US 11

11. The 11-27-2002 trial transcript shows Defendant ROBERT J. SHARPENTER had no notice and no idea in the year 2000, that his two donkeys and one goat were outside their fenced area. (R. C274-277), Transcript 11-27-2000 (R. 11-27-2000, R. 31-42).

12. The trial transcript of 11-27-2002 provides in part beginning at page 5:
Referring to Memorandum of Law filed 11-20-2000, (R.C 189-207), A133-152, PET LA 181-200.

MR. BOWMAN:

...

I did prepare and file November 20th a memorandum and it basically says what I want to say and I did find a case that says it is not sufficient that the defendant was given notice, that evidence must also establish that he personally believed notice had been given and that is there and the Act requires notice.

There is a statute of limitations. The elements of offense must occur within the statute of limitations, notice being an element of the offense must occur within the statute of limitations.

There is a provision for 24 hours to make corrections. It is logical that the notice and the 24 hours to make corrections must occur within the statute of limitations.

and the defendant must believe he received notice within the statue of limitations and he did not believe he received notice within the statute of limitations. Transcript 11-27-2002 (R. 11-27-2002, R. 5-6).

US 12

"In a criminal prosecution for the offense of criminal trespass to land . . . , it is not sufficient that the defendant was given notice; the evidence must also establish that he personally believed that notice had been given. . . ."
Dutton v. Roo-Mac, Inc., 100 Ill App 3d 116, at 121, 55 Ill. Dec.458, 426 N.E. 2d 604, (1981). A146-153, at 151, PET LA 194-201 at 199.

13. NOTICE PROVISION OF ACT 55 ILLINOIS DOMESTIC ANIMALS RUNNING AT LARGE ACT

The notice provision of Act 55, ILLINOIS DOMESTIC ANIMALS RUNNING AT LARGE ACT Chapter 510 Illinois Compiled Statutes Section 55.1 et. seq. Provides in pertinent part:

"55/1.2 Notice-Impoundment-Liability-Expenses-Liens-Sale-Proceeds

§1.2. A notice of violation of this Act shall be given to the person or owner of livestock running at large if known and a maximum of 24 hours may be granted in which to make the necessary corrections if the violation is an accidental occurrence...

Act is spelled with a capital A, and therefore the notice provision applies to the entire Act, beginning with the title of the act, and extending through the last paragraph of the Act,

"55/3.1 Violations-Corporations and Partnerships

§3.1 Any person who violates this Act shall be guilty of a Class C Misdemeanor...

Petition for Rehearing page 3 filed 3-27-2002, Memorandum of Law filed 11-20-2000 (R.C. 198-207), A 133-152; PET LA 181-200.
Transcript 11-27-2000, (R. 11-27-2000, R. 20-21)

14. The notice provision states in part:

"A notice of violation of this Act shall be given...

The Appellate Court over looked:

(1) Act is spelled with a capital A and the notice provision begins with the title of the Act and extends through the last paragraph.

(2) The word shall, and the word shall is a mandatory word.

(3) The Appellate Court essentially overlooked the entire first part of the sentence concerning notice, and went to the part of the sentence after the word and, concerning discretion to provide 24 hours to make corrections.

As far as notice is concerned the Appellate Court misapprehended the statute and stated at page 3:

> "Thus the language of the statue is permissive. The state may in its discretion, provide the owner with 24 hours to confine his animals."

(4) THAT INTERPRETATION IS THE INTERPRETATION OF A VAGUE AND THEREFORE UNCONSTITUTIONAL STATUTE THAT IS NOT CLEAR AND

DEFINITE ENOUGH TO BE EQUAL PROTECTION UNDER THE LAW ENFORCED.

(5) The statute requires notice.
Notice must be alleged.
Notice must be alleged within the statute of limitations. Memorandum of Law filed 11-20-2002 (R.C 189-307), A 133-152, PET LA 181-200

(6) The Appellate Court misapprehended the "A notice of violation of this Act shall be given...." provision of the Illinois Domestic Animals Running at Large Act.

15. Defendant ROBERT J. SHARPENTER'S 5-9-2000 letter to Tim McCann, States Attorney, the 5-30-2000 Trial Exhibit Defendant Exhibit 3, Trial Exhibit pages TE 9,10 shows Defendant ROBERT J. SHARPENTER did not believe he had received notice, and a 3 year old notice is not sufficient, and states in part:

> "To begin with, it should have been evident to both of you from our first conversation that when I said I hadn't been served prior to or in conjunction with my animals' being removed, I meant prior to, as in a few days or a week, <u>not</u> 3 years ago."
>
> . . .
>
> "You were both aware that, my <u>entire defense</u> on this matter was based on the fact that I hadn't beenserved prior to or following removal, . . ." Trial Exhibit 5-30-2000, TE 9,10, PET LA 43, 44

VS 15

16. Each count of the complaint fails to allege notice, and the each count of the complaint fails to charge an offense, Transcript 10-24-2002 (R. 10-24-2000, R 15-18) (RS 1 through S 18), A 158-172, PET LA 206-220.

17. Each count of the complaint fails to allege notice within the statute of limitations and fails to charge an offense. Pursuant to Court Order, Bruce F. Bowman filed a memorandum of law, 11-20-2000, MEMORANDUM OF LAW OF DEFENDANT ROBERT J. SHARPENTER WHEN VIOLATION OF A STATUTE REQUIRES NOTICE, AND WHEN THERE IS A STATUTE OF LIMITATIONS, THE NOTICE MUST BE WITHIN THE STATUTE OF LIMITATIONS, NOTICE IS AN ELEMENT OF THE OFFENSE (S 1 through S 18), A 134-152, PET LA 181-200, also see MOTION TO DISMISS FOR VIOLATION OF STATUTE OF LIMITATIONS (R. C147-150), A84-84, PET LA 132-135.

18. The payments ordered 6-5-2000, to be paid by the defendant for his two donkeys and one billy goat, exceed the maximum amount, $1500.00, for a Class C Misdemeanor, Illinois Compiled Statutes, Chapter 730 Section 5/5-9-1 (3), and therefore constitute cruel and unusual punishment, in violation of United States Constitution Amendment Eight and also constitute an attempt to take and seize the property of Defendant ROBERT J. SHARPENTER without due process of law, contrary to and in violation of United States Constitution Amendment Four, the right to own property and be free from unreasonable seizures, and also contrary to and in violation of United States Constitution Amendment Fourteen the right to equal protection under the law and due process of law.

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Response of Defendant to Motion to Strike Defendant's 29 point Motion for Discovery filed 10-20-2000, (R. C 165-172), A120-127, PET LA 168-175, at 169-170.

19. Defendant ROBERT J. SHARPENTER filed 6-2-2000, a legal brief with typed cover and 6 typed pages. (R.C 40-46), A 37-43, PET LA 85-90.

20. The payments ordered 6-5-2000 for two donkeys and one billy goat straying approximately 3 years after 1997 notice, and approximately 2 years after one 1998 oral notice, and with no notice in the year 1999, and with no notice in the year 2000; before impoundment 3-20-2000 were:

> "2. That the cost of transporting the livestock described in the petition to the Hoofed Humane Society, Woodstock, Illinois, 60098 on March 20, 2000 in the amount of $200.00, to be paid from defendant's bond, to be paid to John C. Stewart, 21 Pletcher, Yorkville, Illinois, 60506, pursuant to statute.
>
> 3. That the cost of maintaining and caring for the livestock described in the petition, to be paid to the Hoofed Humane Society, Woodstock, Illinois, 60098, by the defendant, pursuant to statute in the amount of $2056.00 as of June 5, 2000, plus an additional $25.00 per day for each day the livestock remain at the Hoofed Humane Society."

US 17

6-5-2000 order, filed 6-6-2000, (R. C 48-50), A 44-46, PET LA 91-93.

21. The Supreme Court should exercise its supervisory authority.

22. Defendant ROBERT J. SHARPENTER has not received notice of the sale of his two donkeys and one goat.

23. Defendant ROBERT J. SHARPENTER has not paid the 6-5-2000 Court ordered amounts, except the $200.00 transportation was paid with his bond money.

24. As of 3-8-2000, the date of the Appellate Court order, Defendant ROBERT J. SHARPENTER might owe:

$ 200.00	Transportation 3-20-2000 (paid with bond money)
2,056.00	3-20-2000 To 6-5-2000, ($25 per day)
16,025.00	6-5-2000 Through 3-8-2000, ($25 per day)
$18,281.00	

The Supreme Court should exercise its supervisory authority, and consider the final character of the judgement sought to be reviewed, and grant the Petition for Leave to Appeal.

The amounts ordered paid 6-5-2000 exceed the maximum amount $1500.00 for a Class C Misdemeanor Illinois Compiled Statutes, Chapter 730, Section 5/5-9-1 (3). Response of Defendant to Motion to Strike Defendant's 29 point Motion for Discovery filed 10-20-2000,

(R. C165-172), A120-127, PET LA 168-175.

25. Defendant ROBERT J. SHARPENTER was found 1-3-2001, NOT GUILTY, for the same four days 3-12-2000, 3-13-2000, 3-19-2000, 3-20-2000, for the same animals, two donkeys and one goat, that were the subject of the 6-5-2000 order for payments.

26. The 6-5-2000 preliminary order was entered when Defendant ROBERT J. SHARPENTER represented himself in Court and was ordered to pay more than the statutory maximum amount $1500.00 for a Class C Misdemeanor. Response of Defendant to Motion to Strike Defendant's 29 point Motion for Discovery filed 10-20-2000, (R. C165-172), A120-127, PET LA 168-175.

27. A subsequent order entered in the same case is controlling. People v. McCarty, 11 Ill. App. 3d 420 (1973). Manny Cab Co. v. McNeill Teaming Co. 28 Ill. App. 3d 1013, 1021, (1975).

28. Two appellate court subsequent order cases are at the top of page 6 of the Petition for Rehearing filed 3-27-2002. Pages 1-13, PET LA 5-17.

Where there is a motion to suppress before trial, and a motion to suppress during trial, a judge has a duty to grant motion to suppress evidence when it is shown to have been obtained by illegal search.
People v. McCarty, 11 Ill. App. 3d 420,(1973).

VS 19

A civil case establishing a subsequent order is controlling is Manny Cab Co. v. McNeill Teaming Co.28 Ill. App. 3d 1014, 1021 (1975). The denial of the original section 72 petition the grounds of improper notice was not res judicata as to the amended section 72 peitition.

29. When there is a subsequent NOT GUILTY order in the same case, the subsequent order is controlling, and the property of the defendant, except contraband, goes back to the defendant. Seized property like guns, clothes, and knives go back to theDefendant when the Defendant is found NOT GUILTY.

30. Also, there is a possibility that some people let Defendant ROBERT J. SHARPENTER's animals out, and possible evidence of fraud.

The 10-24-2000 transcript pages 18, 19 provide in part:

THE COURT: No. I'm going through them. I mean you've got all this information available to you. I don't understand D, any evidence of fraud in the above case. I don't understand that.

MR. BOWMAN: That somebody might have let his animals out.

THE COURT: What?

MR. BOWMAN: Somebody might have let his animals out.

US 20

THE COURT: That's all part of the case. That's the evidence. This is a misdemeanor, Class C Misdemeanor.

31. It is strange that the NOTICE OF VIOLATION OF DOMESTIC ANIMALS RUNNING AT LARGE ACT served by the Sheriff 3-20-1997 was used to impound two donkeys and one goat exactly 3 years later 3-20-2000.

However, the Court Exhibits used by the Kendall County Assistant State's Attorney Eric Weis for the 5-30-2000 Court hearing at the Kendall County Courthouse, Yorkville, Illinois, show that State Exhibit One A was the 3-20-1997 Proof of Service, and that State Exhibit Number 1B was the March 12, 1997 Notice served by the Kendall County Sheriff 3-20-1997.

HEARING (TRIAL) 5-30-2000 EXHIBITS TE 1, 2, 3, 4 and PET LA 35-38.

The Kendall County Sheriff served the written notice 3-30-1997, and the Kendall County Sheriff Department impounded the two donkeys and a goat exactly 3 years later 3-20-2000.

32. It is strange that the NOTICE OF VIOLATION OF DOMESTIC ANIMALS RUNNING AT LARGE served by the Sheriff 3-20-1997 was actually dated 3-12-1997 and that the first alleged date of violation, in the year 2000 case, was exactly 3 years later 3-12-2000.

33. It is strange that the duration from the date of the notice 3-12-1997 until the notice was served 3-20-

1997, was the same duration for the dates of alleged violation exactly 3 years later, those alleged dates of violation being 3-12-2000, 3-13-2000, 3-19-2000, 3-20-2000.

34. Defendant ROBERT J. SHARPENTER was cross examined 11-27-2000 by Kendall County Assistant State's Attorney JEAN FLETCHER, and Assistant State's Attorney JEAN FLETCHER began her cross examination by asking Defendant ROBERT J. SHARPENTER about his work.
Transcript 11-27-2000 page 34 and continuing, (R. 11-27-2000, R. 34-36).

CROSS EXAMINATION

By: Ms. Fletcher

Q. Mr. Sharpenter, do you work away from your house?

...

MR. BOWMAN: Judge, I would object to the questions. They are not—they are beyond the scope of direct examination and I don't see how they are relevant to the case.

MS. FLETCHER: Judge, I believe that the reason of asking these questions is to establish that Mr. Sharpenter in fact was gone for more than twelve hours on those days and he was not at home to receive notice from Mr. Baker, nor was he home when these animals were allegedly running at large.

US 22

It doesn't relieve him of liability but it would certainly go to whether or not he was there, and once – so he really can't say whether those animals were out or not because he wasn't present, he was at his office in Montgomery.

35. Defendant ROERT J. SHARPENTER testified he received no notice in the year 2000, and had no knowledge in the 2000, before impoundment 3-20-2000, that his animals were running at large.

THE STATE WAS TRYING TO PROVE Defendant ROBERT J. SHARPENTER was at work and not present the days of alleged violation 3-12-2000, 3-13-2000, 3-19-2000, 3-20-2000.

THE STATE DID NOT NOTIFY Defendant ROBERT J. SHARPENTER when he was at work 3-12-2000, 3-13-2000, 3-19-2000, 3-20-2000, that his animals were running at large.

THE STATE DID NOT NOTIFY Defendant ROBERT J. SHARPENTER when he returned from work 3-12-2000, 3-13-2000, 3-19-2000, that his animals, being two donkeys and one goat, were outside their fenced area during the day and allegedly running at large.

When Defendant, ROBERT J. SHARPENTER returned from work 3-20-2000, he had received no notice of animals running at large in the year 2000, and his animals, being two donkeys and one goat were impounded and removed to another county, McHenry County, Illinois.

US 23

36. If Defendant ROBERT J. SHARPENTER'S animals were running at large in the year 2000 before impoundment, THE STATE HAD THE OPPORTUNITY TO NOTIFY Defendant ROBERT J. SHARPENTER, that his animals were allegedly running at large.

37. THE STATE CHOSE NOT TO NOFIFY Defendant ROBERT J. SHARPENTER, that his animals were allegedly running at large while he was at work, 3-12-2000, 3-13-2000, 3-19-2000, 3-20-2000.

38. THE STATE CHOSE NOT TO NOTIFY Defendant ROBERT J. SHARPENTER when he came home from work 3-12-2000, 3-13-2000, 3-19-2000 that his animals were allegedly running at large during the day.

39. THE STATE CHOSE TO PREPARE TO REMOVE Defendant ROBERT J. SHARPENTER'S ANIMALS TO another county, McHenry County, Illinois.

40. THE STATE CHOSE TO REMOVE TO MCHENRY COUNTY, ILLINOIS, AND IMPOUND Defendant ROBERT J. SHARPENTER'S ANIMALS 3-20-2000, without prior NOTICE in the year 2000.

41. Defendant ROBERT J. SHARPENTER was at work and had NO NOTICE in the year 2000, before removal and impoundment of his animals.

42. Defendant ROBERT J. SHARPENTER'S animals were removed to another county and impounded without sufficient notice, and without due process of law.

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43. There was unusual matters concerning the record on appeal that was prepared by Kendall County for the Appellate Court.

44. Attorney BRUCE F. BOWMAN noticed unusual matters concerning the record on appeal, and the Defendant ROBERT J. SHARPENTER Appellant Brief filed 4-25-2001 contains Section VIII, UNUSUAL MATTERS CONCERNING RECORD ON APPEAL at pages 58 through 64.

45. Illinois Supreme Court Rule 321. Contents of the Record on Appeal, provides in part:

"...
The common law record includes every document filed and judgment and order entered in the cause, and any documentary exhibits offered and filed by any party..."

46. Illinois Supreme Court Rule 324. Preparation and Certification by the Circuit Clerk of the Record on Appeal, provides in part:

"The clerk of the trial court shall prepare, bind and certify the record on appeal. The record shall be arranged in three sections; the common law record, the report of proceedings, and the trial exhibits. ..."

47. Although there was no court reporter when Defendant ROBERT J. SHARPENTER attempted to defend himself in Court in Kendall County, Illinois 5-30-2000, the Defendant ROBERT J. SHARPENTER, after entry of the 6-5-2000 order for payments, hired court reporters to go the Kendall

County Courthouse, 6-22-2000, 6-29-2000, 7-10-2000, and Attorney BRUCE F. BOWMAN hired court reporters to go to the Kendall County Courthouse, Yorkville, Illinois 10-20-2000, 10-24-2000, 10-30-2000, and 11-27-2000.

48. Attorney BRUCE F. BOWMAN requested the Clerk of the Circuit Court of Kendall County, Illinois to prepare the record on appeal, and 3-20-2001 picked up what was to be taken to the Appellate Court for the record on appeal.

49. That 3-20-2001 record on appeal did not contain writings that might be favorable to Defendant ROBERT J. SHARPENTER, including the 5-30-2000 trial exhibits, and some transcripts, and some writing and motions filed.

50. Attorney BRUCE F. BOWMAN filed 3 motions in the Appellate Court to supplement the 3-20-2001 record on appeal.

51. Maybe people told the Clerk of the Circuit Court of Kendall County, Illinois, what to put in the record on appeal to be taken to the Appellate Court.

52. LOREN STROTZ, Clerk of the Appellate Court died in September 2001. A copy of Attorney BRUCE F. BOWMAN, 3-21-2001 letter to LOREN STROTZ is included in this filing.

WHEREFORE, Defendant ROBERT J. SHARPENTER asks:

(1) The Supreme Court to consider conflict with prior Appellate court decisions, and that Defendant

ROBERT J. SHARPENTER was subsequently found NOT GUILTY on all four counts for the same animals for the same four days in a subsequent order entered 1-3-2001, and grant the Motion for Leave to Appeal the prior 6-5-2000 order for payments to the Supreme Court of Illinois.

(2) For Leave to Appeal to the Supreme Court of Illinois as a matter of right, a Constitutional Amendment issue, being involved, the property of Defendant ROBERT J. SHARPENTER being taken without sufficient notice and therefore without due process of law.

(3) For Leave to Appeal to the Supreme Court of Illinois as a matter of right, a constitutional amendment issues being involved, the 6-5-2000 order is in excess of the maximum amount, $1,500, for a Class C Misdemeanor, and the 6-5-2000 order is both cruel and unusual punishment, and also a taking of Defendant ROBERT J. SHARPENTER'S property without due process of law.

(4) For Leave to Appeal to the Supreme Court of Illinois as a matter of sound judicial discretion, considering:

(a) The general importance of the question presented including:

(1) Taking animals without sufficient notice and removal to another county.

(2) Payments in excess of the maximum amount for a Class C misdemeanor

(3) The amount of the payments ordered might now exceed $18,281 for two donkeys and one goat.

(b) The need to exercise the Supreme Court's supervisory authority considering Defendant was at work when his animals were allegedly running at large 3-12-2000, 3-13-2000, 3-19-2000, and 3-20-2000, and not notified when he returned from work 3-12-2000, 3-13-2000, 3-19-2000, before his animals were impounded and removed to another country 3-20-2000.

(5) For Leave to Appeal to the Supreme Court of Illinois considering the final character of the judgment sought to be reviewed, and considering the amount ordered paid might now exceed $18,281.00.

(6) For such other and further relief as equity may require.

Respectfully Submitted,

S/ Bruce F. Bowman

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BRUCE F. BOWMAN, 0264881
Attorney for Defendant-Petitioner
Robert J. Sharpenter
1741 West Galena Blvd.
Aurora, Illinois 60506
Telephone (630) 844-1741
Wisconsin Telephone and
Ameritech Voice Mail (262) 248-1539

Signed and sworn to before me for copying 10-14-2002
and for filing 10-15-2002

S/ Leonard Casario

Notary Public Seal

US 29

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

COUNTY OF KENDALL	)	
	)	
vs.	)	GEN. NO. 2000 CM 361
	)	
Robert J. Sharpenter	)	
(Defendant)	)	

ORDER PURSUANT TO 510 ILCS 55/1.2

This matter comes on plaintiff's Petition for Order Pursuant to 510 ILCS 55/1.2. The defendant, Robert J. Sharpenter, having been served with a summons to appear, a hearing being held on plaintiff's petition, witnesses sworn and proofs heard, and the Court being fully advised in the matter, hereby finds and orders as follows:

1. That the defendant owns, possesses or maintains the premises located at 59 Century Drive, Oswego, Kendall County, Illinois and has done so since 1985.
2. That the defendant is the owner of two donkeys and one goat, referred to as "livestock" under the Illinois Domestic Animals Running At Large Act, pursuant to 510 ILCS 55/1.1, for at least the last three years.
3. That on March 20, 2000, the livestock described in paragraph #2, pursuant to 510 ILCS 55/1.2, were

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impounded by the Kendall County Sheriff's Department due to the fact that the livestock were running at large.

4. That the defendant was personally served with a Petition For Order Pursuant to 510 ILCS 55/1.2 and a four-count criminal complaint on April 19, 2000, requiring the defendant to appear on April 25, 2000 at 9:00 a.m.

5. That the defendant "was in a rush when getting the summons, (he) didn't even look at the date of Court but gave it to (his) secretary with a note to 'give me weekend 29/30' ".

6. That the defendant failed to appear for court on April 25, 2000, and a Default Order Pursuant To 510 ILCS 55/1.2 was entered.

7. That between March 20, 2000 and May 15, 2000, the defendant has refused or failed to provide restraints for the livestock and the impounded livestock have not been claimed and said livestock have incurred costs for care and treatment.

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8. That the defendant, in his motion to vacate the default order of April 25, 2000, acknowledges that he received notice from the Kendall County State's Attorney Office on April 10, 2000 as to the impoundment of the livestock on March 20, 2000.

9. That the defendant testified that the livestock "get loose approximately one time per year over that last five years and has been notified by the neighbors on these occasions."

10. That the defendant submitted the affidavit of Eddie Mackie which states "(he) is responsible for maintaining the fences, that (he) has been negligent in his duties, and (he) has been notified at least a couple of times by Bob (defendant) that the animals were running loose". And that the fence was repaired on "Monday, May 15, 2000."

11. That the People of the State of Illinois, through the Kendall County State's Attorney Office, petitioned this Court, pursuant to statute, to grant an order allowing the Hoofed Humane Society, Woodstock, Illinois to allow for the sale or adoption of said livestock, where said livestock are currently impounded.

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12. That the Court finds that the livestock were running at large and therefore subject to impoundment pursuant to statute.

13. That the Court further finds that the defendant had been given notice of the livestock running at large both prior to and after the impoundment of the livestock on March 20, 2000, that the fence was in disrepair, that the livestock running at large was not accidental ant that both the defendant and his "assistant", Eddie Mackie, were at fault.

14. That the Court further finds that the fence was not repaired until at least May 15, 2000, pursuant to the affidavit of Eddie Mackie.

15. That the defendant now represents to the Court that the fence has been repaired and is in proper working order as of June 5, 2000.

IT IS HEREBY ORDERED:

1. That ownership of the livestock described in the petition, being two donkeys and one goat, is hereby returned to the defendant, subject to the terms and conditions set forth in 510 ILCS 55/1.2 and this order.

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2. That the costs of transporting the livestock described in the petition to the Hoofed Humane Society on March 20, 2000, in the amount of $200.00, to be paid from defendant's bond, to be paid to John C. Stewart, 21 Pletcher, Yorkville, Illinois 60506, instanter, pursuant to statute.

3. That the costs of maintaining and caring for the livestock described in the petition, to be paid to the Hoofed Humane Society, Woodstock, Illinois, 60098, by the defendant, prior to the release of the livestock back to the defendant, pursuant to statute, in the amount of $2056.00 as of June 5, 2000, plus an additional $25.00 per day for each day the livestock remain at the Hooved Humane Society.

4. That for payment of the costs of the Hooved Human Society shall be made in either cash, certified check or money order. Said payment must be made in full before the livestock will be released to the defendant.

5. That the Kendall County State's Attorney Office shall fax a copy of this order to the Hooved Humane Society and also inform them as to the conditions for the release of the livestock.

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6. That the defendant shall arrange for transportation to return the livestock to his property.

7. That this cause is continued to June 20, 2000 at 9:00 a.m. for status of the return of the livestock or entry of a order for the sale of said livestock pursuant to 510 ILCS 55/1.2.

Dated: 5th of June, 2000

_____

JUDGE

US 35

IN THE CIRCUIT COURT FOR THE SIXTEENTH
JUDICIAL CIRCUIT
KENDALL, COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
vs. GEN.NO. 00 CM 361
) filed
ROBERT J. SHARPENTER, (Defendant)) OCT 17 2000
SHIRLEY R. LEE
Circuit Clerk
Kendall Co.

ANSWER TO DEFENDANT'S MOTION FOR DISCOVERY PURSUANT TO PEOPLE v. SCHMIDT, 56 ILL. 2d 572.

...

Eric Weis
Assistant States Attorney
Kendall County, Illinois

...

3/31/98

...

DEPUTY MARK BUNTING

...

"I made contact with Assistant State Attorney ERIC WEIS by telephone and related to him what had been transpiring in the Century State Subdivision regarding the animals. WEIS advised me that the next step in remedying the

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situation would be to serve SHARPENTER with Notice of Violation of the Illinois Domestic Animals Running at Large Act. Once that action has been taken, any subsequent incidents with the animals would require that a Notice of Impoundment be issued to SHARPENTER through registered mail. Upon that step being taken any additional problems with the animals would result in the animals being impounded at that time."

16th Judicial Circuit
County of Kendall
P. O. Box M
Kendall County Courthouse
Yorkville, IL 60560

Seal
JUDGE JAMES M. WILSON
in chambers (630) 553-4208

January 2, 2001

Ms. Jean Fletcher
Assistant State's Attorney
Kendall County Courthouse
807 West John Street
Yorkville, IL 60560

Mr. Bruce Bowman
Attorney at Law
1741 West Galena Blvd.
Aurora, IL 60506

RE: People vs. Sharpenter
Case No. 00-CM-361

Counselors:

This cause came upon for trial pursuant to 510 ILCS 55/3.1 charging the defendant with criminally violating the Illinois Domestic Animals Running at Large Act, a class C misdemeanor. More specifically, 510 ILCS 55/1 provides:

> "No person or owner of livestock shall allow livestock to run at large in the state of Illinois. All owners of livestock shall provide the necessary restraints to prevent such livestock from so running at large and shall be liable in civil action for all damages occasioned by such animals running at large: Provided, that no owner or keeper of such animals shall be liable for damages in any civil suit for injury to the person or property of another

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caused by the running at large thereof without the knowledge of such owner or keeper, when such owner or keeper can establish that he used reasonable care in retraining such animals from so running at large."

The criminal section, 510 ILCS 55/3.1, provides:

"Any person who violates this Act shall be guilty of a Class C misdemeanor."

Prior to deciding the criminal case, it should be noted that there is also a separate section of the statute, 510 ILCS 55/1.2, which is civil in nature and provides for impoundment of animals running at large. It was the Court's position that the action brought by the State pursuant to this section should have been filed and presented as a totally distinct action. However, without any objection ever being presented by anybody, the Court permitted the actions to proceed as filed but separately. When defendant failed to appear, a default order was entered but subsequently vacated. A full hearing pursuant to 510 ILCS 55/1.2 was then held and an order on June 6, 2000, making numerous findings of fact including but not limited to the fact the defendant knew the animals were running loose, that he requested Mackie to fix the fence, and that Mackie was negligent in not fixing the fence in accordance with defendant's requests. That order has subsequently been appealed.

At the criminal trial pursuant to 510 ILCS 55/3.1, counsel for both sides, especially for the defendant, kept trying to interject evidence relating to 510 ILCS 55/1.2, which the Court kept reiterating such evidence was not going to be reconsidered in the criminal trial nor would the Court take judicial notice of evidence presented at the 55/1.2 hearing for purposes of the 55/3.1 trial. The State has the burden of proving the defendant guilty beyond a reasonable doubt based upon evidence presented at the 55/3.1 trial only. Therefore,

the issue presented for the Court is did the State meet its burden accordingly.

The State's argument, without presenting any authority, is similar to the holding in the First District Appellate Court case of Village of Northbrook v. Cannon, 61 Ill App 3d 315, that the statute is "malum prohibitum" and, therefore, intent or knowledge that the animals were loose is no defense. Further, the State argues that because the defendant was served with a notice in 1997, he had knowledge that the animals had previously been loose.

The defendant's arguments are "all over the board", but seem to be mostly directed to the 55/1.2 hearing even though the defendant had already appealed that ruling. Because the Court sustained most of the State's objections in this regard, there is no need to re-visit any of them now.

The Court, however, does direct counsel to the Fourth District Appellate court case of City of Champaign v. Auler, 100 Ill App 3d 243, that specifically rejects the Cannon case relying on Illinois Supreme Court cases and a Second District Appellate Court opinion holding that to be guilty of an offense, the State must show some guilty intention or willful neglect on the part of the animal owner. In other words, the State must prove beyond a reasonable doubt knowledge or negligent conduct on the part of the animal owner. See also 1 ALR 4th 994.

Clearly, the State made such proofs at the 55/1.2 hearing but did not present the same evidence at the 55/3.1 trial. A prior 1997 notice is insufficient to support the criminal complaints alleging events that occurred in March, 2000. The Court is not going to use evidence presented at the 55/1.2 hearing to fill the void necessary to establish guilt beyond a reasonable doubt at the 55/3.1 criminal trial. If the adjacent landowner suffered damages, he may avail himself of the remedies provided for in 510 ILCS 55/1.

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A copy of the order finding the defendant not guilty of Counts I through IV is enclosed herewith.

Very truly yours,

James M. Wilson
Judge

JMW/rsm

Encl

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STATE OF ILLINOIS)
) SS.
COUNTY OF KENDALL)

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiffs,

vs Gen. No. 2000 CM 361

ROBERT J. SHARPENTER

Defendant

ORDER

THIS CAUSE HAVING COME UPON FOR trial on counts I through IV alleging the defendant violated 510 ILCS 55/3.1 by committing four (4) separate offenses of Permitting Domesticated Animals to Run At Large, the Court having heard the evidence and the Court further finding the State having failed to meet its burden and being otherwise fully advised.

IT IS HEREBY ORDERED that the defendant shall be and herby is found not guilty as to Counts I through IV filed herein.

Entered this 3rd Day of 2001

JUDGE

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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

People of the State of Illinois	)	
	)	
vs.	)	Gen. No. 2000CM0361
	)	
ROBERT J. SHARPENTER	)	
Defendant	)	

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JAMES M. WILSON, Judge Presiding

MR. BOWMAN: Are you then denying my motion to dismiss the case for failure to allege notice in each of the four counts of the complaint because you are finding that notice is not a requirement of the statute?

THE COURT: Correct. There is nothing in Section 55/3.1 that requires notice to be given before the state may file a Class C misdemeanor charge for a violation of the offense.

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